

Ohio Valley Supermarkets, Inc., d/b/a Point Pleasant Foodland and Food Store Employees Union, Local 347 United Food and Commercial Workers, AFL-CIO, Petitioner. Case 9-RC-14245

23 March 1984

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 6 May 1983 the Regional Director for Region 9 issued his Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate for collective bargaining the Petitioner's requested unit of all full-time and regular part-time employees employed by the Employer at its Point Pleasant, West Virginia store. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review on the grounds that the Regional Director made factual errors and departed from precedent in finding the single-store unit appropriate.

The Board, by telegraphic order dated 3 June 1983, granted the request for review and stayed the scheduled election. Thereafter, the Employer filed a brief in support of its contention that the only appropriate unit must include all three stores in its grocery chain.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case as well as the Employer's brief on review and makes the following findings:

The Employer, an Ohio corporation, owns and operates three retail grocery stores. The Ohio Valley Foodland, located at 520 Jackson Avenue, Gallipolis, Ohio, is 4.9 miles (10 minutes) from Gallipolis Foodland, which is located at 252 Third Avenue in Gallipolis, and 8.9 miles (15 minutes) from the Point Pleasant Foodland located in Point Pleasant, West Virginia. Approximately 36 employees work at the Ohio Valley Foodland, 32 at the Gallipolis Foodland, and 33 at the Point Pleasant Foodland. There is no bargaining history for any of the Employer's employees. On 21 March 1983 the Petitioner filed a petition seeking to represent a unit of employees at the Point Pleasant store. The Regional Director found the evidence insufficient to overcome the presumption favoring the single-store unit, and directed an election in the petitioned-for unit. We find, contrary to the Regional Director, that in this case, the single-store presumption has been rebutted and only a unit com-

prised of employees at all three grocery stores is appropriate.

Robert Eastman, the Employer's president and general manager, oversees the operations of the three stores from his office in the Ohio Valley store. Although each store has a separate store manager, Eastman spends 50 percent of his time at Ohio Valley, and divides the remaining 50 percent equally between the Gallipolis Foodland and Point Pleasant stores. He visits each of the stores at least once a day and holds a weekly meeting with managers from all three stores. In addition, Eastman is in frequent phone contact with the stores, and the Point Pleasant store manager testified that Eastman calls at 3-hour intervals for sales readings.

The operations of the three stores are highly integrated and administratively centralized. All advertising, seasonal and major purchasing, and pricing are done by Eastman. Store managers do only basic ordering within the quarterly inventory allotment and dollar limits set by Eastman. Eastman is the only one with authority to pledge the Employer's credit. All records are kept at the Ohio Valley office and all paychecks are delivered from that office. Uniform labor relations policies and work rules are set by Eastman; thus, all job classifications, wage scales, and benefits are the same for employees at all three stores, and each receives an employee handbook. Quarterly budgets prepared by the store managers as to departments, hours, and wages are all reviewed by Eastman.

The store managers review employment applications and interview prospective employees who apply directly to their store. They make hiring recommendations to Eastman who has final approval. On occasion Eastman has refused to hire a recommended applicant. Store managers may issue both verbal and written warnings, but they cannot suspend or discharge an employee without approval, except in a case of dishonesty where they may suspend or call the police and then notify Eastman. If any employee has a complaint or a grievance, he may go to his department head, to the store manager, use the "hotline" mailbox number, or go directly to Eastman when he is in the store or contact him by phone. Employees also go directly to Eastman with questions or regarding such matters as insurance programs, eligibility for benefit programs, or to express an interest in being assigned additional work hours.

Eastman sets basic guidelines for scheduling, including how many hours are to be worked on Sundays and holidays, and how many hours should be worked in a particular area. Within these guidelines, individual store managers schedule front-end employees; and meat and produce managers may

schedule their own department's employees. Basic overtime is scheduled by the store managers, but Eastman must approve any major overtime. Store managers, however, have authority to lay off part-time employees and to recall them.

Department heads and store managers evaluate employees and Eastman often sits in on the evaluations. In addition, he reviews and signs all evaluations. A store manager may recommend a promotion or initiate a merit increase, but Eastman must give final approval. Periodic wage increases are reviewed by Eastman and are discussed with the store manager before Eastman signs them; either Eastman or the store manager notifies the employee of the increase.

The Ohio Valley store opened 1 March 1980, followed by Gallipolis Foodland 2 June 1982, and Point Pleasant 7 August 1982. Documentary evidence submitted by the Employer reveals that several employees have been temporarily transferred each time a new store has opened. However, it is unclear how long these "temporary transfers" lasted. In addition, Employer's Exhibit 14 shows that, when its operations expanded with a second and third store, at least 39-40 new employees were trained at another store before being permanently assigned as full-time or part-time employees. The evidence also shows that there have been approximately four or five permanent transfers into the Point Pleasant store between August 1982 and April 1983. Although the store manager also testified that there have been at least three transfers out of Point Pleasant into Gallipolis Foodland, Employer's Exhibit 14 terms these as "additional work" while still showing the employees to be part-time clerks at Point Pleasant. Similarly, when Gallipolis Foodland opened, there were approximately three permanent transfers to Gallipolis from Ohio Valley; and Employer's Exhibit 14 shows that there have been three transfers from Gallipolis back to Ohio Valley. However, some of the permanent transfers involved promotions from part-time to full-time status and from department clerks to department heads.

The Regional Director, in finding that the evidence was insufficient to overcome the presumption favoring the single-store unit, concluded that the store managers are primarily responsible for day-to-day operations, although their authority is "somewhat circumscribed." We disagree with the Regional Director, and find that the involvement and control demonstrated by Eastman restricts the authority of these store managers considerably more than the Regional Director's decision would indicate. As the Board noted in *Petrie Stores Corp.*, 266 NLRB 75 (1983), the lack of the individual

store managers' autonomy may compel a finding that the single-store unit sought by the Petitioner is inappropriate, particularly where there is a high degree of centralization of administration and control. Moreover, if the interests of the employees of a single store may be shown to have been effectively merged into a more comprehensive unit so that store has lost its individual identity, the presumptive appropriateness of a single-store unit is rebutted. *Frisch's Big Boy*, 147 NLRB 551 (1964); *Haag Drug Co.*, 169 NLRB 877 (1968).

In the instant case, Eastman has final authority on all personnel decisions, including hiring, disciplining, promotions, and terminations. All labor relations policies are determined by him and applied uniformly. Scheduling, overtime, and basic ordering must be done within the guidelines he has set out for the three stores. Eastman himself does all advertising, major purchasing, and pricing on a centralized basis, thus leaving the store manager very little authority in those areas. Further, the close proximity of the stores, combined with Eastman's presence in the Ohio Valley store at least 50 percent of the time, and his daily visits and regular phone contacts with the Gallipolis Foodland and Point Pleasant stores make him readily accessible to the employees. Indeed, employees have come directly to Eastman with questions regarding benefits and work assignments, as well as complaints or grievances. Lastly, although interchange has almost exclusively involved the opening of new stores and promotions, and thus is not entitled to much weight in determining the scope of the unit,¹ it is also clear that there have been some transfers, both permanent and temporary, which did not involve the opening of any new stores.

We conclude, therefore, that the authority of the individual store managers at the Employer's three stores is greatly circumscribed and that, while they participate in personnel and labor relations matters, the substantial authority regularly exercised by Eastman renders the requested single-store unit inappropriate.² Instead, due to centralized administration, geographic proximity, and lack of autonomy of the local store managers, an employerwide unit is the only appropriate unit. As such unit is considerably larger than the unit sought by the Petitioner, involves three locations, and the Petitioner has not indicated that it would go to an election in any unit other than the Point Pleasant location, we shall dismiss the petition.

ORDER

It is ordered that the petition be dismissed.

¹ *Renzetti's Market*, 238 NLRB 174, 175 fn. 8 (1978).

² *Big Y Foods*, 238 NLRB 860 (1978).